

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

(Motion Under 28 U.S.C. § 2255)

**Instructions** 1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.

2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.

7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for \_\_\_\_\_  
Address  
City, State Zip Code

9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.

10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY  
A PERSON IN FEDERAL CUSTODY**

United States	Distri	NEW MEXICO
District Court	ct	10 <sup>th</sup>
Name (under which you were convicted):	Docket or Case No.:	
Place of Confinement:	Prisoner No.:	
FLI EDGEFIELD	95943051	
EDGEFIELD, S.C.		
UNITED STATES OF AMERICA	Movant (include name under which convicted)	KEVIN VIGIL

v.

**MOTION1.** (a) Name and location of court that entered the judgment of conviction you are challenging: US District Court for the District of New Mexico

(b) Criminal docket or case number (if you know): No 18 CR 739 mv

2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_

(b) Date of sentencing: \_\_\_\_\_

3. Length of sentence: 30 years

4. Nature of crime (all counts): Defendant was charged with two(2) counts of engaging in a sexual act with a child

5. (a) What was your plea? (Check one)

☒ (1) Not guilty

☐ (2) Guilty

☐ (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

6. If you went to trial, what kind of trial did you have? (Check one) ☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? ☐ Yes ☐ No

8. Did you appeal from the judgment of conviction? ☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: US COURT OF APPEALS, 10th CIRCUIT

(b) Docket or case number (if you know): USCA NO. 20-2160

(c) Result: DENIED

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? ☒ Yes ☐ No

If "Yes," answer the following:

(1) Docket or case number (if you know): 18 CR 739 MV

(2) Result: DENIED

(3) Date of result (if you know): FOR MARCH

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a)(1) Name of court: US District Court for the District of N.M.  
 (2) Docket or case number (if you know): 18-739 MV  
 (3) Date of filing (if you know): unknown 8/16/2019  
 (4) Nature of the proceeding: motion in limine  
 (5) Grounds raised: Admissibility of statements

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

☒ Yes ☐ No

- (7) Result: Denied Exclusion/granted Admission

- (8) Date of result (if you know): 7/31/2019

for government

- (b) If you filed any second motion, petition, or application, give the same information:

- (1) Name of court: \_\_\_\_\_  
 (2) Docket or case number (if you know): \_\_\_\_\_  
 (3) Date of filing (if you know): \_\_\_\_\_  
 (4) Nature of the proceeding: \_\_\_\_\_  
 (5) Grounds raised: \_\_\_\_\_

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

☐ Yes ☐ No

- (7) Result: \_\_\_\_\_

- (8) Date of result (if you know): \_\_\_\_\_

- (c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First Y No  
 petition: e

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S  
 (2) Second Y No  
 petition: e  
 S

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

ineffective assistance of  
counsel

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

INEFFECTIVE ASSISTANCE OF COUNSEL

**GROUND ONE: my public defender**

DID NOT HIS JOB RIGHT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

DID NOT CALL CHARACTER

WITNESSES ON my

DEFENCE AND BELIEF

SHOWING WHAT KIND OF

A PERSON I AM AND WOULD

SHOW THAT I WOULD NEVER

HURT ANYONE. ESPECIALLY

A CHILD. I HAVE BEEN AROUND

AND HAVE A CHILD AND GRAND CHILD

THAT AGE AND HAVE BEEN AROUND

AROUND CHILDREN ALL my LIFE

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: my attorney NEVER MENTIONED

AND I ASKED HIM WHY AND HE

TOLD ME "HE DIDN'T KNOW WHY"

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise

this issue: Ineffective Assistance of  
Counsel. My lawyer  
should have done it**GROUND TWO: DID NOT ARGUE WHERE SHE**  
**WENT THE (MY) D.N.A. ROOM ENOUGH**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SHE WAS PLAYING ON THE MY PHONE SCREEN  
SHE TOOK A BATH IN MY TUB THAT  
WAS NEVER WASHED IN TWO YRS. WAS  
DRIED WITH MY TOWEL THAT I  
USED SEVERAL TIMES BEFORE  
WAS SAT AND DRESSED ON MY BED  
WHICH I HAVE HAD SEX WITH  
SEVERAL FEMALES INCLUDING  
HER MOM

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No(2) If you did not raise this issue in your direct appeal, explain why: I WASN'T AT THE APPEALHEARING TO BRING IT  
UP. Ineffective Assistance of  
Counsel

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE: MY COUNSEL DID NOT BRING UP THE**

FA

MOM NOT BEING ON MY BED

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE MOM SAID SHE WAS ON THE  
BED (BUT SHE WASN'T) THE GIRL  
WOULD HAVE BEEN SCREAMING  
IN PAIN AND SHE WOULD HAVE  
HEARD IT AND SO WOULD MY DAUGHTER  
IN THE OTHER ROOM AND SHE  
WOULD HAVE BEEN CRYING WHEN  
THEY WERE LEAVING AND HER MOM  
WOULD HAVE BEEN YELLING AT  
ME OR SAYING SOMETHING TO ME

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: MY COUNSEL DID NOT BRING IT UP  
AND I WASN'T THERE TO  
SAY ANYTHING Ineffective counsel.

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND FOUR: DID NOT BRING UP WHAT THE MOTHER TOLD HER WHAT TO SAY**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(MOM) SHE TOLD HER TO SAY THAT  
"I DID IT TO HER OR  
SHE WAS GOING TO  
DIE" SEVERAL OF HER FAMILY  
KNEW ABOUT THIS AND SAID  
IT ON THE DISCOVERY

Ineffective Assistance  
of Counsel.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: I WAS NOT AT THE HEARING. I HAD INEFFECTIVE ASSISTANCE OF COUNSEL

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_



Docket or case number (if you know): \_\_\_\_\_  
 Date of the court's decision: \_\_\_\_\_  
 Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
 \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application? Yes No

(4) Did you appeal from the denial of your motion, petition, or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (c)(4) is "Yes," state:  
 Name and location of the court where the appeal was filed: \_\_\_\_\_  
 \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_  
 Date of the court's decision: \_\_\_\_\_  
 Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
 \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: I had ineffective assistance of counsel because my Attorney did not raise the issues or develop the facts which tended to exonerate or prove my lack of guilt.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No  
 If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: DEVON M. FODDS

ABALA OVERLOOK, N.M.

(b) At arraignment and plea: OFFICE

SAME

(c) At trial: SAME



(d) At sentencing: SAME AS ABOVE(e) On appeal: FILED(f) In any post-conviction proceeding: " "(g) On appeal from any ruling against you in a post-conviction proceeding: SAME AS ABOVE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? ☒ Yes ☐ No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. \*

I had ineffective assistance of counsel and my Appeals were still pending before the Appellate court and the Supreme Court of the U.S.

Therefore, movant asks that the Court grant the following relief: Set aside the Judgment  
and sentence And or  
grant a new trial  
or any other relief to which movant may be entitled.

Signature of Attorney (if any)  
I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and  
that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_  
(month, date, year).  
Executed (signed) on \_\_\_\_\_ (date).

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing  
this motion. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Footnotes

\*

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

[ii] In Forma Pauperis Declaration

In Forma Pauperis Declaration

.....  
(Insert appropriate court)

United States	)	
v.	)	
.....	)	DECLARATION IN SUPPORT
(Movant)	)	OF REQUEST
	)	TO PROCEED
	)	IN FORMA PAUPERIS

I, KEVIN VICK, declare that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief. 1. Are you presently employed?

Yes No

a. If the answer is "yes," state the amount of your salary or wages per month; and give the name and address of your employer.

.....  
.....

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

.....  
.....

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes No

b. Rent payments, interest or dividends?

Yes No

c. Pensions, annuities or life insurance payments?

Yes No

d. Gifts or inheritances?

Yes No

e. Any other sources?

Yes No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

.....  
 .....  
 .....

3. Do you own any cash, or do you have money in a checking or savings account?

Yes No (Include any funds in prison accounts)

If the answer is "yes," state the total value of the items owned.

.....  
 .....  
 .....

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes No

If the answer is "yes," describe the property and state its approximate value. ....

.....  
 .....

5. List the persons who are dependent upon you for support, state your relationship to these persons, and indicate how much you contribute toward their support: .....

.....  
 .....

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on .....  
 (date)

.....  
 (Signature of Movant)

CERTIFICATE

I hereby certify that the movant herein has the sum of \$ ..... on account to his credit at the ..... institution where he is confined. I further certify that movant likewise has the following securities to his credit according to the records of said ..... institution:

.....  
 .....  
 .....  
 .....

.....  
 Authorized Officer of Institution



## **§ 672.02 Scope and Purpose of Section 2255 and Relationship to Other Post-Conviction Proceedings**

### **[1] Purpose and Scope of Section 2255**

28 U.S.C. § 2255, the statute authorizing post-conviction collateral relief for federal prisoners, was enacted by Congress in 1948 to allow those in federal custody to challenge the validity of their sentences and convictions in the district in which they were convicted and sentenced. The statutory intent was to alleviate practical difficulties that had arisen in administering federal prisoners' applications for post-conviction relief. Prior to the enactment of section 2255, federal convicts were required to move for such relief by filing a habeas corpus petition in the district of their confinement, which placed an excessive burden on those districts where major federal penitentiaries were located, and provided a forum inconveniently remote from the district where the conviction occurred and the sentence was imposed. <sup>1</sup>

Section 2255 authorizes a federal prisoner to challenge the legality of a federal sentence on four grounds: "that the sentence was imposed in violation of the Constitution or laws of the United States ... that the court was without jurisdiction to impose such sentence ... that the sentence was in excess of the maximum authorized by law [and that the sentence] is otherwise subject to collateral attack." <sup>2</sup> While the language of section 2255 seems to address problems with the sentence as opposed to the conviction, the Supreme Court has clearly held that section 2255 is the proper method for post-conviction challenges to the underlying conviction as well as to the sentence. The Court based this conclusion on the legislative history of section 2255, which reveals that Congress enacted that section to enable federal prisoners to attack their sentences and convictions in the same manner as state prisoners can attack their sentences and convictions under the section 2254 habeas corpus statute. <sup>3</sup>

### **[2] Relationship to Other Post-Conviction Proceedings**

#### **[a] Section 2254 Petitions by State Prisoners**

A motion under section 2255 is for all practical purposes the federal analogue to a petition for habeas corpus by a state prisoner pursuant to 28 U.S.C. § 2254. The Supreme Court has made this clear on several occasions, stating that section 2255 "was intended to afford federal prisoners a remedy identical in scope to federal habeas corpus"; <sup>4</sup> that "[t]he terms 'post-conviction' and 'habeas corpus' ... are used interchangeably in legal parlance to refer to proceedings under § 2254 and § 2255"; <sup>5</sup> and that section

2255 “was intended to mirror § 2254 in operative effect.” 6

Indeed, with few exceptions, legal principles and prior caselaw related to both provisions are treated interchangeably by the courts. As a result, in a number of instances throughout this chapter, the reader is advised to consult Ch. 671, *Federal Habeas Corpus*, for further discussion. Still, there are a few areas where the provisions diverge because principles of federalism require different treatment of particular issues: there is no exhaustion of remedies requirement in section 2255 cases (see § 672.07), there is no application of the rules concerning which factual findings below must be given preclusive effect (see Ch. 671, *Federal Habeas Corpus*), and the remedies available in section 2255 cases are broader than those in section 2254 (see § 672.11). On the other hand, because the section 2255 movant has had previous opportunities to litigate many issues that might be challenged in a post-conviction proceeding, issues of cognizability are significantly more complex than in section 2254 cases (see § 672.05).